

BILL NO. R-94-02-17

RESOLUTION NO. R-04-94

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA OPPOSING THE INDIANA STATE LEGISLATURE'S ATTEMPTS TO CURTAIL THE EXERCISE OF GOVERNMENTAL POWERS BY THE CITY OF FORT WAYNE PURSUANT TO INDIANA'S "HOME RULE" STATUTE.

WHEREAS, 1980 the "Home Rule" statute, I.C. 36-1-3-1 et seq was adopted by the Indiana State Legislature and became prevailing law in the State of Indiana with respect to the exercise of governmental powers by governmental units other than the State of Indiana including, but not limited to municipalities, such as the City of Fort Wayne; and

WHEREAS, through the express terms of said statute, it is the policy of the State of Indiana to grant units of government, including municipalities such as the City of Fort Wayne, all the "power that they need for the effective operation of government as to local affairs;" and

WHEREAS, units of government, including municipalities such as the City of Fort Wayne by the express terms of I.C. 36-1-3-5 "may exercise any power it has to the extent that the power is not expressly denied by the Indiana State Constitution or by statutes; and is not expressly granted to another entity;" and

WHEREAS, the Indiana State Legislature in its present session is attempting to pass legislation to curtail the exercise of governmental powers by units of government, including municipalities such as the City of Fort Wayne, by proposing new state laws that would:

- (1) prohibit passage of legislation by such municipalities which would control the use of hand guns;
- (2) curtail the existing prohibition of the use of leg traps within the city limits of municipalities such as the City of Fort Wayne, by reason of existing municipal legislation prohibiting their use;
- (3) which would regulate by State law smoking in public places, eventhough there exists ordinances within municipalities such as the City of Fort Wayne which address the regulation of smoking in public places; and

WHEREAS, the power to regulate the use of hand guns, to prohibit the use of leg traps and/or to regulate smoking in public places within the city limits is not a power specifically prohibited by any statute of the State of Indiana or the Indiana Constitution; and

WHEREAS, the pending legislation in the Indiana State Legislature with respect to hand guns, leg traps, and/or smoking in public areas represents a specific abrogation by the Indiana State legislature of powers granted to municipalities by reason of the above-quoted Home Rule statute.

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3 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF
4 THE CITY OF FORT WAYNE, INDIANA THAT:

5 SECTION 1. It expresses its opposition to any specific
6 attempts by the Indiana State Legislature to restrict the
7 ability of the Common Council of the City of Fort Wayne to
8 pass legislation to control hand guns within the limits of the
9 City of Fort Wayne, to prohibit the use of leg traps within
10 city limits and/or to regulate smoking in public areas of the
11 City of Fort Wayne, or any other matter that would restrict
12 the Fort Wayne Common Council from setting policy regarding
13 issues relevant specifically to the City of Fort Wayne.

14 SECTION 2. By the passage of this resolution the Common
15 Council of the City of Fort Wayne expressly states its
16 opposition to and its disapproval of the efforts of the
17 Indiana State Legislature to abrogate powers granted to the
18 City of Fort Wayne by reason of the Home Rule statute, which
19 is the law of the State of Indiana, with respect to the
20 exercise of governmental powers in municipalities and other
21 units of government other than the State of Indiana.

22 SECTION 3. The Common Council respectfully requests that
23 the Indiana State Legislature confine its legislation to
24 matters involving citizens of the State of Indiana, and allow
25 all municipalities including the City of Fort Wayne to
26 properly exercise governmental powers that are reserved in
27 said municipalities by reason of the existence of the Home
28 Rule statute of State of Indiana, in I.C. 36-1-3-1 et seq.

29 SECTION 4. Upon its passage, a copy of this Resolution
30 shall be delivered to the Indiana State Senate, the Indiana
31 House of Representatives, and to the Governor of the State of
32 Indiana.

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APPROVED AS TO FORM
AND LEGALITY.

Stanley A. Levine
Legal Advisor to
Fort Wayne Common Council

Read the first time in full and on motion by _____,
and duly adopted, read the second time by title and referred to the
Committee on _____ (and the City Plan Commission
for recommendation) and Public Hearing to be held after due legal notice, at
the Common Council Council Conference Room 128, City-County Building, Fort
Wayne, Indiana, on _____, the _____ day of
_____, 19_____, at _____ o'clock
_____, M., E.S.T.

DATED: _____

SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Gia Quinta,
and duly adopted, placed on its passage. PASSED ~~LOST~~
by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>7</u>			<u>2</u>
<u>BRADBURY</u>	<u>✓</u>			
<u>EDMONDS</u>	<u>✓</u>			
<u>GiaQUINTA</u>	<u>✓</u>			
<u>HENRY</u>	<u>✓</u>			
<u>LONG</u>	<u>✓</u>			
<u>LUNSEY</u>	<u>✓</u>			
<u>RAVINE</u>				<u>✓</u>
<u>SCHMIDT</u>				<u>✓</u>
<u>TALARICO</u>	<u>✓</u>			

DATED: 2-22-94.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 9-04-94.
on the 22nd day of February, 1994.

ATTEST:

(SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Thomas E. Henry
PRESIDING OFFICER

BILL NO. B-9402-17

REPORT OF THE COMMITTEE ON
REGULATIONS *Committee of the City*
REBECCA J. RAVINE - MARK E. GIAQUINTA - CO-CHAIR
DONALD J. SCHMIDT
JANET G. BRADURY

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS
REFERRED AN (ORDINANCE) (RESOLUTION) _____

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (RESOLUTION) _____

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
<i>Mark E. Giaquinta</i>			
<i>Rebecca J. Ravine</i>			
<i>Janet G. Bradury</i>			
<i>Sam Tolareco</i>			
<i>Thomas P. Henry</i>			

DATED: 2-22-94

Sandra E. Kennedy
City Clerk